IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 920 of 2004
with
CIVIL APPLICATION No. 3280 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO LTD.

Versus

VELABHAI ARJANBHAI MUNDHWA

Appearance:
1. First Appeal No. 920 of 2004
MR PV NANAVATI for Appellant
MR VIBHUTI NANAVATI for Appellant
MR. A.R.MAJMUDAR for MR NK MAJMUDAR
for Respondent No. 1
RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 01/02/2005

ORAL JUDGEMENT

By filing instant appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short), appellant United India Insurance Co. Ltd. seeks to challenge the order dated 15.1.2004 rendered below application Exh.7 in MACP No. 119 of 2001 by the MACT (Aux.) Second Fast Track Court, Rajkot, by which the application filed by respondent No.1 - original claimant under Section 140 of the Act to receive interim compensation of Rs.25,000 under 'No Fault Liability' principle, came to be allowed and thereby the appellant is directed to pay to respondent No.1 - original claimant in the claim petition a sum of Rs.25,000 together with interest @ 9% per annum from the date of the application till its realisation, within one month from the date of the order, jointly and severally with respondent Nos. 2 and 3.

2. Respondent No.1 is the claimant before the Tribunal in the claim petition filed under Section 166 of the Act for recovering compensation of Rs.2,00,000 as, he has received injury, as a result of the vehicular accident which has taken place on 2.12.2000 between 3:45 PM and 6:00 PM within the jurisdiction of the Rajkot City Police Station. As per the averments made in the claim petition, the claimant was going to Rajkot from Kuvadava on his Motorcycle bearing registration No.GAO 5995. At that time Matador bearing registration No.GJ 3T 5918, driven in a rash and negligent manner, while overtaking his motorcycle, dashed on the right leg of the claimant which got fractured. As per the case of the claimant, driver of the Matador drove the vehicle in rash and negligent manner and while overtaking his motorcycle, the accident took place and the claimant received injuries, which has resulted into partial and permanent disability.

3. In the claim petition, the claimant has also filed application under Section 140 of the Act for recovery of Rs.25,000/- by way of interim compensation under 'No Fault Liability' principle.

4. The Tribunal, after considering the FIR, Panchnama, registration of RC Book, insurance policy, and injury certificate, came to the conclusion that vehicle bearing registration No.GJ 3T 5918 belonged to respondent No.3 and driven by respondent No.2 was involved in the accident and it was insured with the appellant at the relevant time. In the said accident claimant has received fracture which has resulted into partial and permanent disability and therefore he is entitled to receive interim compensation of Rs.25,000 and accordingly

the Tribunal has awarded the said amount to the claimant which has given rise to the present appeal.

5. Mr.P.V.Nanavaty, learned advocate of the appellant has contended that the accident has not occurred as alleged by the claimant because, as per the certificate, while admitting the claimant to Dr.Avinash Maru's hospital, the claimant has disclosed that he has sustained injury on account of slip of his Scooter and he changed his version on 15.12.2000. The said fact is reflected in the hospital record.

The sum and substance of the submission made by Mr. Nanavaty centers around the fact that the claimant has not received injury on account of vehicular accident and the Tribunal has not considered this aspect, which has resulted into miscarriage of justice and therefore, according to him impugned order deserves to be quashed and set aside by allowing this appeal. He, therefore, urged that the impugned order may be quashed and set aside by allowing this appeal.

6. In counter submission, Mr. A.R.Majmudar, learned advocate of the respondent - original claimant contended that the Tribunal, after considering the FIR, Panchnama, injury-cum-disability certificate and the policy of insurance, has come to the conclusion that the claimant has received injury on account of vehicular accident and therefore there is no infirmity committed by the Tribunal in passing the impugned order which does not call for any interference in this appeal. He, therefore, urged to dismiss the appeal.

7. I have considered the submissions advanced by Mr. Nanavaty, learned advocate for the appellant and Mr. Majmudar, learned advocate of the respondent - original claimant. I have perused the averments made in the memo of the appeal, grounds set out therein and the impugned order passed by the Tribunal. I have also gone through the documents supplied by Mr.Nanavaty, learned advocate of the appellant during the course of his submissions.

8. It may be noted that as per sub-Rule (5) of Rule 231 of the Gujarat Motor Vehicles Rules, 1989 ('the Rules' for short), for the purpose of adjudicating the awarding claim, the Claims Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure, 1973. As per sub-Rule (2) of Rule 231 of the Rules, the claimant has to produce the following documents alongwith the claim application:

(i) First Information Report.
(ii) Injury certificate or post mortem report in case of death.
(iii) Heirship certificate in case of death.
(iv) Certificate from the registering authority regarding ownership of the vehicle involved in the accident.
(v) Particulars of insurance of the vehicle involved in the accident.

9. On having perusal of the impugned order, it is seen that the claimant has produced all the required documents as envisaged under the Rules, and on the basis of the said documents, the Tribunal has come to the conclusion that the vehicle bearing registration No. GJ 3T 5918 belonged to respondent No.3 and driven by respondent No.2 was involved in the accident and was insured with the appellant at the relevant time. In the said accident claimant has received fracture which has resulted into partial and permanent disability and therefore he is entitled to recover interim compensation of Rs.25,000 under Section 140 of the Act, i.e. under 'No Fault Liability' principle.

10. It may be appreciated that the amount awarded under 'No Fault Liability' Principle, that is, under Section 140 of the Act, is an interim compensation and obviously it is subject to the adjustment against the final award that will be passed in MACP which is still pending before the Tribunal. This principle is established by the Supreme Court in the case of the ORIENTAL INSURANCE CO. LTD. V. HANSRAJBHAI V KODALA, 2001 (4) JT 477.

11. In aforesaid view of the matter, the contention advanced by Mr. Nanavaty, learned advocate of the appellant, cannot be considered at this interim stage in view of the fact that such a contention can be raised in the main substantive claim petition which is still pending before the Tribunal. If the appellant raises such a contention before the Tribunal, the Tribunal shall decide the same in accordance with law at the end of the trial.

12. In view of the aforesaid state of affairs, I do not see any justifiable ground or valid reason to interfere with the impugned order at this stage. However, with a view to safeguard the interest of the appellant, an undertaking of the claimant is required to be obtained so that the claimant shall not abandon the main claim petition and withdraw the amount with a view

to fritter away the amount of compensation of Rs.25,000/with interest thereon, which is awarded in his favour.

13. In this view of the matter, it is directed that the original claimant shall file a solemn undertaking before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause and that the claimant shall obtain a decision on merit in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award that will be passed in the main claim petition. On the undertaking being filed by the claimant, as aforesaid, the amount under the impugned order may be permitted to be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal on the terms and conditions of the impugned order.

14. Subject to the aforesaid observations and directions, the appeal is dismissed with no order as to costs.

15. Since the appeal is dismissed, the above numbered Civil Application does not assume any survival value and hence the same is also dismissed with no order as to costs. Rule is discharged. Ad-interim relief granted earlier shall stand vacated.

(A.M.Kapadia,J)

Jayanti*